



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 30, 1995

Mr. Jerry Bruce Cain
Acting City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR95-311

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31504.

The City of Laredo (the "city") received an open records request for "the personnel and application file" of a job applicant for the city's fire department. The request comes from the attorney for the applicant, who was rejected for employment. You contend that the requested information held by the city is deemed confidential under section 143.089(g) of the Local Government Code and thus must be withheld pursuant to section 552.101 of the Government Code.¹

Section 143.089 applies to municipalities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Local Gov't Code § 143.002. *See generally* Open Records Decision No. 562 (1990). Section 143.089 provides for the creation of two personnel files for police officers and fire fighters: one that is maintained by the city's civil service director and the other by the city police or fire department. Section 143.089(g) provides in pertinent part that

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

[a] fire or police department may maintain a personnel file on a fire fighter or police officer *employed by the department* for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of civil service] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file. [Emphasis added.]

Section 143.089(g) expressly pertains to personnel files of individuals who are employed by the police or fire departments. Applying the maxim of statutory construction "*expressio unius est exclusio alterius*," we conclude that by specifying that personnel files of individuals "employed by the department" are confidential, the legislature did not intend to extend the scope of section 143.089(g) to apply to the personnel records of individuals who applied for employment but were ultimately rejected. *See also* Open Records Decision No. 478 (1987) (statutory confidentiality requires express language making particular information confidential). Accordingly, the city may not withhold the requested records pursuant to section 143.089(g).

Because you raise none of the Open Records Act's other exceptions to required public disclosure, the requested records must be released in their entirety,² with the following exception. Among the records at issue are documents reflecting the results of a polygraph examination taken by the applicant. Section 19A of article 4413(29cc), V.T.C.S., which governs the release of polygraph examinations, provides in pertinent part:

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person . . . or governmental agency that requested the examination;

. . . .

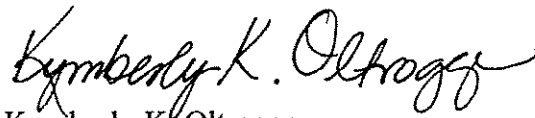
²We note that some of the information at issue may implicate the privacy interests of the requestor's client. Because the requestor has a special right of access to this information pursuant to section 552.023 of the Government Code, we need not address at this time the extent to which this information would be available to members of the general public.

(d) A person for whom a polygraph examination is conducted or an employee of the person *may* disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section. [Emphasis added.]

The polygraph examination at issue here appears to have been conducted at the request of the city. In addition, as we have noted, the requestor is the examinee's legal representative. Consequently, the city is authorized, but not required, to release the results of the polygraph examination to the requestor. *See also* Open Records Decision No. 430 (1985).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/rho

Ref.: ID# 31504

Enclosures: Submitted documents

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